

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICIA BARRETT,
Plaintiff,

vs.

CAROLYN W. COLVIN,
Acting Commissioner of Social
Security,
Defendant.

No. 4:15-CV-5109-LRS

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
JUDGMENT, *INTER ALIA***

BEFORE THE COURT are the Plaintiff's Motion For Summary Judgment (ECF No. 14) and the Defendant's Motion For Summary Judgment (ECF No. 19).

JURISDICTION

Patricia Barrett, Plaintiff, applied for Title II Disability Insurance benefits (DIB) and Title XVI Supplemental Security Income benefits (SSI) on June 3, 2011. The applications were denied initially and on reconsideration. Plaintiff timely requested a hearing which was held on March 6, 2014 before Administrative Law Judge (ALJ) Marie Palachuk. At the hearing, Plaintiff amended her disability onset date to June 3, 2011, thereby making her SSI claim her only claim for benefits. Plaintiff testified at the hearing, as did medical expert Donna Veraldi, a psychologist, and Vocational Expert (VE) Diane Kramer. On March 28, 2014, the ALJ issued a decision finding the Plaintiff not disabled. The Appeals Council denied a request for review of the ALJ's decision, making that decision the Commissioner's final decision

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1 subject to judicial review. The Commissioner's final decision is appealable to district
2 court pursuant to 42 U.S.C. §405(g) and §1383(c)(3).

4 STATEMENT OF FACTS

5 The facts have been presented in the administrative transcript, the ALJ's
6 decision, the Plaintiff's and Defendant's briefs, and will only be summarized here. At
7 the time of the administrative hearing, Plaintiff was 56 years old. She has past
8 relevant work experience as an apartment manager, baker helper, fast food worker
9 and child care attendant. Plaintiff alleges disability since June 3, 2011, on which date
10 she was 53 years old.

12 STANDARD OF REVIEW

13 "The [Commissioner's] determination that a claimant is not disabled will be
14 upheld if the findings of fact are supported by substantial evidence...." *Delgado v.*
15 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983). Substantial evidence is more than a mere
16 scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975), but less
17 than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
18 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573, 576 (9th Cir.
19 1988). "It means such relevant evidence as a reasonable mind might accept as
20 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401, 91
21 S.Ct. 1420 (1971). "[S]uch inferences and conclusions as the [Commissioner] may
22 reasonably draw from the evidence" will also be upheld. *Beane v. Richardson*, 457
23 F.2d 758, 759 (9th Cir. 1972); *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
24 On review, the court considers the record as a whole, not just the evidence supporting
25 the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
26 1989); *Thompson v. Schweiker*, 665 F.2d 936, 939 (9th Cir. 1982).

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1 It is the role of the trier of fact, not this court to resolve conflicts in evidence.
2 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
3 interpretation, the court must uphold the decision of the ALJ. *Allen v. Heckler*, 749
4 F.2d 577, 579 (9th Cir. 1984).

5 A decision supported by substantial evidence will still be set aside if the proper
6 legal standards were not applied in weighing the evidence and making the decision.
7 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir.
8 1987).

9 ISSUES

10 Plaintiff argues the ALJ erred in: 1) evaluating the opinions of Dr. Chau,
11 M.D., and Dr. Prakash, M.D. 2) discounting Plaintiff's credibility; and 3) finding that
12 Plaintiff could perform her past relevant work as an apartment manager.

14 DISCUSSION

15 SEQUENTIAL EVALUATION PROCESS

16 The Social Security Act defines "disability" as the "inability to engage in any
17 substantial gainful activity by reason of any medically determinable physical or
18 mental impairment which can be expected to result in death or which has lasted or can
19 be expected to last for a continuous period of not less than twelve months." 42
20 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be determined
21 to be under a disability only if her impairments are of such severity that the claimant
22 is not only unable to do her previous work but cannot, considering her age, education
23 and work experiences, engage in any other substantial gainful work which exists in
24 the national economy. *Id.*

25 The Commissioner has established a five-step sequential evaluation process for
26 determining whether a person is disabled. 20 C.F.R. § 416.920; *Bowen v. Yuckert*,
27 482 U.S. 137, 140-42, 107 S.Ct. 2287 (1987). Step one determines if she is engaged
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1 in substantial gainful activities. If she is, benefits are denied. 20 C.F.R. §
2 416.920(a)(4)(i). If she is not, the decision-maker proceeds to step two, which
3 determines whether the claimant has a medically severe impairment or combination
4 of impairments. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant does not have a severe
5 impairment or combination of impairments, the disability claim is denied. If the
6 impairment is severe, the evaluation proceeds to the third step, which compares the
7 claimant's impairment with a number of listed impairments acknowledged by the
8 Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R.
9 § 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpart P, App. 1. If the impairment meets or
10 equals one of the listed impairments, the claimant is conclusively presumed to be
11 disabled. If the impairment is not one conclusively presumed to be disabling, the
12 evaluation proceeds to the fourth step which determines whether the impairment
13 prevents the claimant from performing work she has performed in the past. If the
14 claimant is able to perform her previous work, she is not disabled. 20 C.F.R. §
15 416.920(a)(4)(iv). If the claimant cannot perform this work, the fifth and final step
16 in the process determines whether she is able to perform other work in the national
17 economy in view of her age, education and work experience. 20 C.F.R. §
18 416.920(a)(4)(v).

19 The initial burden of proof rests upon the claimant to establish a prima facie
20 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
21 Cir. 1971). The initial burden is met once a claimant establishes that a physical or
22 mental impairment prevents her from engaging in her previous occupation. The
23 burden then shifts to the Commissioner to show (1) that the claimant can perform
24 other substantial gainful activity and (2) that a "significant number of jobs exist in the
25 national economy" which claimant can perform. *Kail v. Heckler*, 722 F.2d 1496,
26 1498 (9th Cir. 1984).

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ALJ'S FINDINGS

The ALJ found the following: 1) Plaintiff has “severe” medical impairments consisting of major depressive disorder, mild to moderate; anxiety; osteoarthritis of the bilateral hands and bilateral knees; and mild obesity; 2) Plaintiff does not have an impairment or combination of impairments that meets or equals any of the impairments listed in 20 C.F.R. § 404 Subpart P, App. 1; 3) Plaintiff has the residual functional capacity (RFC) to perform light work as defined in 20 C.F.R. § 416.967(a) with lifting and carrying of 20 pounds occasionally and 10 pounds frequently; she can stand and/or walk about 6 hours in an 8 hour workday and sit for about 6 hours in an 8 hour workday; pushing and pulling is unlimited; her performance of postural activities (climbing, balancing, stooping, kneeling, crouching or crawling) is limited to “occasional;” she is able to understand, remember and carry out simple, routine, and repetitive tasks and instructions, and learn detailed tasks; she is capable of only occasional contact with the general public; and 4) Plaintiff’s RFC allows her to perform her past relevant work as an apartment manager. Accordingly, the ALJ concluded the Plaintiff is not disabled.

PHYSICIAN OPINIONS/CREDIBILITY

It is settled law in the Ninth Circuit that in a disability proceeding, the opinion of a licensed treating or examining physician or psychologist is given special weight because of his/her familiarity with the claimant and his/her condition. If the treating or examining physician's or psychologist’s opinion is not contradicted, it can be rejected only for clear and convincing reasons. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). If contradicted, the ALJ may reject the opinion if specific, legitimate reasons that are supported by substantial evidence are given. *Id.* “[W]hen evaluating conflicting medical opinions, an ALJ need not accept the opinion of a doctor if that opinion is brief, conclusory,

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1 and inadequately supported by clinical findings.” *Bayliss v. Barnhart*, 427 F.3d 1211,
2 1216 (9th Cir. 2005).

3 Plaintiff saw Wing C. Chau, M.D., on August 5, 2008 for a “Disability
4 Impairment Evaluation.” Dr. Chau’s musculoskeletal examination revealed “mild
5 osteoarthritic changes of both knees.” (Administrative Record (AR) at p. 402). He
6 noted that Plaintiff was “able to ambulate up on her toes and heels.” (AR at p. 403).
7 Dr. Chau opined that Plaintiff’s radiological study supported “early osteoarthritic
8 changes at several joints[,] including the knees.” (AR at p. 403). He further opined:

9 She was felt to be capable of at least light duty work with
10 carrying and lifting up to 10 [pounds] The patient
11 should have a job that allows her to sit and stand as
12 tolerated. She should have medical benefits to delay
13 progression of osteoarthritis as well as treat her for
14 diabetes and hypertension.

15 (AR at p. 403).

16 Plaintiff was seen by S. Prakash, M.D., at Tri-Cities Community Health, on
17 December 21, 2010. He completed a Washington Department of Social & Health
18 Services (DSHS) “Physical Evaluation” form in connection with Plaintiff’s
19 application for state disability benefits. Dr. Prakash concluded that Plaintiff had
20 “moderate to severe DJD [Degenerative Joint Disease] of knee” which significantly
21 interfered with abilities to stand, walk, lift, handle and carry. (AR at p. 444). He
22 further concluded Plaintiff was limited to “sedentary” work, defined as lifting 10
23 pounds maximum, frequently lifting and/or carrying such articles as files and small
24 tools, and potentially requiring sitting, walking and standing for brief periods. (AR
25 at p. 444). He opined that Plaintiff was in need of an orthopedic evaluation for the
26 degenerative joint disease in her knees. (AR at p. 445).

27 Approximately one month earlier (November 2010), a radiological exam of
28 Plaintiff’s knees taken at the Lourdes Medical Center in Pasco indicated “[b]ilateral
symmetric moderate osteoarthritic change with moderate suprapatellar effusions.”
(AR at p. 460). “Three views of . . . each knee including weightbearing view

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1 demonstrate[d] moderate-to-severe joint space loss at the medial compartments
2 bilaterally and fairly symmetrically.” (AR at p. 460).

3 Plaintiff returned to Dr. Chau for another “Disability Impairment Evaluation”
4 on December 22, 2011. Dr. Chau noted that the November 2010 radiological exam
5 had reported moderate degenerative arthritis of both knees. (AR at p. 471). He
6 opined that Plaintiff was “capable of full time work at a sedentary-light duty work
7 (sic) where she is not required to do [a] significant amount of walking or lifting, as
8 her degenerative condition will likely worsen over time.” (AR at p. 472).

9 The ALJ gave only “some weight” to Dr. Chau’s 2008 opinion because it
10 predated the amended alleged onset date of June 3, 2011 by three years. (AR at p.
11 31). Likewise, the ALJ gave only “some weight” to Dr. Chau’s 2011 opinion,
12 asserting there was “no evidence” that Plaintiff’s condition had “significantly
13 worsened” since Dr. Chau’s 2008 opinion. (AR at p. 31). According to the ALJ,
14 “[x]-rays of the thoracic and lumbar spine . . . are with ‘minimal’ to ‘mild’
15 degenerative changes only, and the physical exam at the time was without
16 neurological or other findings to support the more restrictive residual functional
17 capacity given by Dr. Chau.” (AR at p. 31). Instead, the ALJ gave “significant
18 weight to the opinion of the non-examining state agency medical consultant, Olegario
19 Ignacio, Jr., M.D., who opined . . . that the claimant was capable of a wide range of
20 light exertion with postural limitations at occasional.” (AR at p. 31 and pp. 105-07).
21 Dr. Ignacio indicated he had considered the two reports of Dr. Chau from 2008 and
22 2011, the findings of which “indicated reasonable ROM [range of motion], 5/5
23 strength and minimal imaging findings.” (AR at p. 106). Dr. Ignacio further
24 indicated that Dr. Chau’s assessments “are adopted as modified in this RFC.” (AR
25 at p. 106).

26 It is apparent that what Dr. Ignacio and, in turn, the ALJ failed to acknowledge
27 was the worsening in the degenerative joint disease in the Plaintiff’s knees as
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1 confirmed by x-ray evidence. The ALJ mentioned only the x-rays of the thoracic and
2 lumbar spine and there is no indication that Dr. Ignacio considered the x-rays
3 showing moderate degenerative arthritis of both of Plaintiff's knees. As such, it was
4 improper to give "significant weight" to the opinion of Dr. Ignacio and only "some
5 weight" to the opinion of Dr. Chau. Furthermore, it was improper of the ALJ to
6 accord "no weight" to the evaluation of Dr. Prakash (AR at p. 32) who opined that
7 Plaintiff had moderate to severe degenerative joint disease in the knees just one
8 month after x-rays showed "each knee including weightbearing view demonstrate[d]
9 moderate-to-severe joint space loss at the medial compartments bilaterally and fairly
10 symmetrically." In sum, the ALJ did not offer "specific and legitimate" reasons for
11 discounting the opinions of Drs. Chau and Prakash. The opinion of a non-examining
12 physician such as Dr. Ignacio cannot, by itself, constitute substantial evidence that
13 justifies rejection of the opinion of an examining or a treating physician. *Lester*, 81
14 F.3d at 831.

15 Interestingly enough, although the ALJ failed to acknowledge that Plaintiff's
16 degenerative condition in her knees had worsened, the ALJ did acknowledge in her
17 decision that "[Plaintiff] does have moderate degenerative arthritis of both knees . .
18 . but on exam . . . she was able to ambulate without assistance, and walk on heels and
19 presumably toes." (AR at p. 30). This statement cited to the x-ray examination of
20 November 2010 and to Dr. Chau's December 2011 examination. While it is true that
21 Dr. Chau indicated Plaintiff was able during the December 2011 examination to
22 "walk on the heels and the ankles" (presumably intending to refer to toes instead of
23 ankles), it is also true that the osteoarthritis in Plaintiff's knees had worsened since
24 2008. This led Dr. Chau to opine that Plaintiff was now capable of full time work at
25 a "sedentary-light duty" level, whereas in 2008, he had opined she was capable of
26 light duty work.

27 The ALJ found Plaintiff was only "partially credible" (AR at p. 30), but there
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1 is no statement or testimony by the Plaintiff which clearly and convincingly is at odds
2 with Dr. Chau's 2011 functional capacity assessment. Where, as here, the Plaintiff
3 has produced objective medical evidence of an underlying impairment that could
4 reasonably give rise to some degree of the symptoms alleged, and there is no
5 affirmative evidence of malingering, the ALJ's reasons for rejecting the Plaintiff's
6 testimony must be clear and convincing. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th
7 Cir. 2014); *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014). It is true Plaintiff
8 did not list any prescription medications in the form she completed for the SSA Office
9 of Hearings and Appeals on March 6, 2014 (AR at p. 503), but elsewhere in the
10 medical record, there is an indication that she had been taking medications, including
11 ibuprofen. (AR at pp. 312, 470, 483-84 and 490).

12 The daily living activities testified to by Plaintiff are not inconsistent with Dr.
13 Chau's 2011 functional capacity assessment. "The Social Security Act does not
14 require that claimants be utterly incapacitated to be eligible for benefits . . . and many
15 home activities are not easily transferable to what may be the more grueling
16 environment of the workplace where it might be impossible to periodically rest or
17 take medication." *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). "[T]he mere fact
18 that a plaintiff has carried on certain daily activities, such as grocery shopping,
19 driving a car, or limited walking for exercise, does not in any way detract from
20 credibility as to her overall disability." *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th
21 Cir. 2001). Rather, "[i]t is only where the level of activity is inconsistent with a
22 claimed limitation that the activity has any bearing on credibility." *Id.* Daily
23 activities therefore "may be grounds for an adverse credibility finding if a claimant
24 is able to spend a substantial part of h[er] day engaged in pursuits involving physical
25 functions that are transferable to a work setting." *Orn v. Astrue*, 495 F.3d 625, 639
26 (9th Cir. 2007). To conclude that a claimant's daily activities warrant an adverse
27 credibility determination, the ALJ must make specific findings relating to the daily
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1 activities and the transferability of the activities to the workplace. *Id.* Here, the ALJ
2 did not make such findings.

3 The record leaves one wondering exactly what Dr. Chau intended by his
4 reference to “sedentary-light duty.” His comments as a whole, and the other evidence
5 in the record, however, lead the court to conclude that he intended “sedentary” duty
6 more than he intended “light” duty. “Light” work involves lifting no more than 20
7 pounds at a time with frequent lifting and carrying of objects weighing up to 10
8 pounds. 20 C.F.R. §416.967(b). And even when the weight lifted is “very little, a job
9 is in this category when it requires a good deal of walking or standing, or when it
10 involves sitting most of the time with some pushing and pulling of arm or leg
11 controls.” *Id.* In 2008, Dr. Chau indicated that Plaintiff was capable of lifting and
12 carrying up to 10 pounds. (AR at p. 403). A 10 pound maximum is consistent with
13 “sedentary” work. 20 C.F.R. §416.967(a). In 2011, he indicated that Plaintiff should
14 not be “required to do [a] significant amount of walking or lifting.” This too is more
15 in line with “sedentary” work, rather than “light” work. A “sedentary” job involves
16 sitting, although walking and standing are “required occasionally.” 20 C.F.R.
17 §416.967(a).

18 **PAST RELEVANT WORK**

19 At step four, the claimant has the burden to prove she cannot perform her past
20 relevant work “either as actually performed or as generally performed in the national
21 economy.” *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002). The Dictionary
22 of Occupational Titles (DOT) is “the best source for how a job is generally
23 performed.” *Pinto v. Massanari*, 249 F.3d 840, 845 (9th Cir. 2001). It is error of an
24 ALJ to classify an occupation “according to the least demanding function.” *Valencia*
25 *v. Heckler*, 751 F.2d 1082, 1086 (9th Cir. 1985).

26 The VE testified that per the DOT, the job of apartment manager is classified
27 as involving “light” exertion. (AR at p. 55). Plaintiff testified that in her capacity as
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1 an apartment manager, she “did paperwork, showed apartments [and] took care of the
2 maintenance.” (AR at p. 48). She testified that she had a maintenance crew and a
3 cleaning crew. (AR at p. 48). The VE testified that “personally” she did not think the
4 job actually involved “light” exertion as set forth in the DOT unless there was lifting
5 involved. (AR at p. 58). The VE testified it was her experience that the job usually
6 fell within the sedentary range (doing paperwork and showing apartments) as
7 suggested by Plaintiff’s testimony that she had a maintenance crew and a cleaning
8 crew. (AR at p. 58).

9 In the “Work History Report” she completed on July 5, 2011, Plaintiff
10 indicated her apartment manager job entailed walking four hours each day. (AR at
11 p. 282). This is more than “occasional” and constitutes a “good deal” of walking
12 which is consistent with “light” exertion. It is “significant” walking which Dr. Chau
13 indicated Plaintiff cannot tolerate because of the worsening osteoarthritic condition
14 in her knees. As actually performed by Plaintiff, her job as an apartment manager
15 constituted “light” work, consistent with how it is generally performed in the national
16 economy per the DOT. There is not substantial evidence in the record supporting the
17 ALJ’s conclusion that Plaintiff could perform her past work as an apartment manager
18 as generally performed in the national economy or as actually performed by Plaintiff.
19 Plaintiff met her step four burden of establishing she cannot perform any of her past
20 relevant work.

21 22 **REMAND**

23 Social security cases are subject to the ordinary remand rule which is that when
24 “the record before the agency does not support the agency action, . . . the agency has
25 not considered all the relevant factors, or . . . the reviewing court simply cannot
26 evaluate the challenged agency action on the basis of the record before it, the proper
27 course, except in rare circumstances, is to remand to the agency for additional

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1 investigation or explanation.” *Treichler v. Commissioner of Social Security*
2 *Administration*, 775 F.3d 1090, 1099 (9th Cir. 2014), quoting *Fla. Power & Light Co.*
3 *v. Lorion*, 470 U.S. 729, 744, 105 S.Ct. 1598 (1985).

4 In “rare circumstances,” the court may reverse and remand for an immediate
5 award of benefits instead of for additional proceedings. *Id.*, citing 42 U.S.C. §405(g).
6 Three elements must be satisfied in order to justify such a remand. The first element
7 is whether the “ALJ has failed to provide legally sufficient reasons for rejecting
8 evidence, whether claimant testimony or medical opinion.” *Id.* at 1100, quoting
9 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). If the ALJ has so erred, the
10 second element is whether there are “outstanding issues that must be resolved before
11 a determination of disability can be made,” and whether further administrative
12 proceedings would be useful. *Id.* at 1101, quoting *Moisa v. Barnhart*, 367 F.3d 882,
13 887 (9th Cir. 2004). “Where there is conflicting evidence, and not all essential factual
14 issues have been resolved, a remand for an award of benefits is inappropriate.” *Id.*
15 Finally, if it is concluded that no outstanding issues remain and further proceedings
16 would not be useful, the court may find the relevant testimony credible as a matter of
17 law and then determine whether the record, taken as a whole, leaves “not the slightest
18 uncertainty as to the outcome of [the] proceedings.” *Id.*, quoting *NLRB v. Wyman-*
19 *Gordon Co.*, 394 U.S. 759, 766 n. 6 (1969). Where all three elements are satisfied-
20 ALJ has failed to provide legally sufficient reasons for rejecting evidence, there are
21 no outstanding issues that must be resolved, and there is no question the claimant is
22 disabled- the court has discretion to depart from the ordinary remand rule and remand
23 for an immediate award of benefits. *Id.* But even when those “rare circumstances”
24 exist, “[t]he decision whether to remand a case for additional evidence or simply to
25 award benefits is in [the court’s] discretion.” *Id.* at 1102, quoting *Swenson v.*
26 *Sullivan*, 876 F.2d 683, 689 (9th Cir. 1989).

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1 Here, the ALJ failed to provide legally sufficient reasons for rejecting the
2 medical opinions of Drs. Chau and Prakash and for rejecting Plaintiff's testimony.
3 Outstanding issues remain, however, which must be resolved at step five of the
4 sequential evaluation process. At the time of the alleged onset date of her disability
5 (June 3, 2011), Plaintiff was 53 years of age which constitutes "closely approaching
6 advanced age." In her hypothetical to the VE, the ALJ asked the VE to assume
7 Plaintiff was "approaching the advanced age category" and had a "limited" education.
8 (AR at p. 56).¹ Assuming Plaintiff had an RFC for the full range of sedentary work
9 on June 3, 2011, the Medical-Vocational Guidelines ("Grids"), 20 C.F.R. § 404,
10 Subpart P, App. 2, would dictate a finding of disability as of that date provided
11 Plaintiff's previous work experience was unskilled or none, or skilled or semi-skilled
12 with the skills not transferable. Rules 201.09 and 201.10.² According to the VE,
13 Plaintiff's previous work as an apartment manager was skilled work, and her previous
14 work as a baker helper was semi-skilled work. (AR at p. 55). The court cannot
15 simply assume the skills obtained in these jobs are not transferable so as to permit use
16 of the grids and find the Plaintiff "disabled."

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18
19 ¹ A 7th through 11th grade level of formal education is considered to be
20 "limited education." 20 C.F.R. § 416.965(b)(3).

21 ² Plaintiff had reached the "advanced age" category (55 older) at the time of
22 her administrative hearing in March 2014. In that category, Rules 201.01 and
23 201.02 would dictate the same result as Rules 201.09 and 201.10.

24 Plaintiff's counsel suggests Plaintiff's education is "high school graduate or
25 more." Depending on Plaintiff's age, Rules 201.04, 201.06, 201.12 and 201.14
26 would dictate a finding of disability if Plaintiff's previous work experience was
27 unskilled or none, or skilled or semiskilled with the skills not transferable, and her
28 high school graduation did not provide for direct entry into skilled work.

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1 This case will be remanded for a determination at step five whether Plaintiff
2 is capable of performing any other work in the national economy that is allowed by
3 her RFC. For the purposes of remand, the Plaintiff's physical RFC is assumed to be
4 no more than the full-range of sedentary work, but the record as it currently exists and
5 as further developed on remand, may justify a different conclusion precluding use of
6 the grids (i.e., physical RFC less than the full range of sedentary work and/or
7 presence of significant non-exertional limitations).³

8
9 **CONCLUSION**

10 Plaintiff's Motion For Summary Judgment (ECF No. 14) is **GRANTED** and
11 Defendant's Motion For Summary Judgment (ECF No. 19) is **DENIED**. The
12 Commissioner's decision is **REVERSED**. Pursuant to sentence four of 42 U.S.C.
13 §405(g) and § 1383(c)(3), this matter is **REMANDED** to the Commissioner for
14 further proceedings to ascertain whether Plaintiff is disabled at step five of the
15 sequential evaluation process. An application for attorney fees may be filed by
16 separate motion.

17 **IT IS SO ORDERED.** The District Executive shall enter judgment
18 accordingly and forward copies of the judgment and this order to counsel of record.

19 **DATED** this 27th day of October, 2016.

20
21 *s/Lonny R. Suko*

22 _____
23 LONNY R. SUKO
24 Senior United States District Judge

25
26 _____
27 ³ As noted, in 2008, Dr. Chau indicated Plaintiff should do work allowing
28 her to sit or stand at will.